Committee on Resources

Subcommittee on Energy & Mineral Resources

Statement

Testimony before the
Committee on Resources, Subcommittee on Energy and Mineral Resources
U. S. House of Representatives
by
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Golden, Colorado Field Hearing
October 23, 1999

Madame Chairperson, Members of the *Sub-Committee on Energy and Mineral Resources*. I am Paul C. Jones, President of Royalstar Resources Ltd. and Sovereign Gold Company. Each of these small companies formerly held exploration and mining properties on public land in the United States. This is no longer the case because the political risk attached to such activities has been made unacceptable due to a well-orchestrated campaign by the current Administration.

I am at this hearing to represent the *Northwest Mining Association (NWMA),* of which I am President-Elect and Co-Chairman of the *NWMA* Public Lands Committee. *NWMA* is a 104 year old trade association with offices in Spokane, Washington. We represent over 2,500 corporate and individual members in 42 states. Many of our corporate and individual members live in the Denver area. The purpose of *NWMA* is to support and advance the mineral resource and related industries, represent and inform members on technical, legislative and regulatory issues, provide for the dissemination of educational material related to mining, foster economic opportunity, and promote environmentally responsible mining. I am a past Executive Director of the *Minerals Exploration Coalition* which was an advocate for exploration and development of mineral resources on the public lands of the United States (U.S.) prior to its merger with *NWMA* in 1998.

INTRODUCTION: Today I would like to discuss two general but related issues. While these two issues are not traditional economic issues, they certainly relate to the effect of regulation on the cost competitiveness of the mining industry in the U.S. today. The issues are the current mineral regulatory process governing the mining industry in the U.S., and the stark differences between the findings of the recently completed *National Academy of Sciences* study on changes needed in regulation related to mining and those changes suggested by *special interest groups* opposed to mining.

My comments on the first issue includes a discussion of weaknesses or abuse in the regulatory system, especially the flagrant abuse by the Administration and their *special interest* supporters in the regulatory development process.

REGULATORY ABUSE*:* Permitting for exploration and mining in the United States has become an extremely costly, time consuming and uncertain process. This process was originally intended to protect the environment from adverse impacts due to mining. Today it is a tool used by *special interest groups* to delay

or stop a proposed project. Ten years ago it was reasonable to plan for a two or three year permit period for a major mining project in the United States. Today the time required approaches eight to nine years, as my examples will demonstrate. During the 1990's projects have not really become more complex, nor have environmental requirements become that much more onerous. The permitting process has become almost unending due to bureaucratic delays and litigation initiated by project opponents. The lengthy time required for permitting, made even longer by indecision on the part of some regulators and the almost universal use of litigation by opponents, results in a greatly increased cost of business to firms operating in the United States. This "cost of business" has reached the point where many major companies and most, if not all, junior companies have elected to do no more basic exploration on public lands in the U. S. until such time as the regulatory situation improves.

Compounding this situation, exploration and mining in the United States has been under a constant attack for the past six and one-half years by the current Administration under the guise of "protecting the environment." This attack appears in many forms. Initially the Administration led an effort in Congress to revise the 1872 Mining Law by attempting to re-craft a land tenure law into an environmental law with the purpose of preventing new mining activity. When this failed, the Administration began a series of quasi-legislative actions focused on over-regulation, delay and revocation of previous permitting actions of the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS).

These actions are being taken, to quote a public statement of John Leshy - the Solicitor Genereal of the Department of Interior - to this committee in an earlier hearing, "because Congress refuses to act on the Mining Law." It appears that when the Administration cannot get Congress to agree to their position on a mining related issue, they implement their position by executive fiat and/or regulatory action. In effect, the Administration is saying '*we know better than Congress what is best for the American people and the mining industry!*'

These delays create a situation of uncertainty and unnecessary expense for a project while, at the same time, not adding commensurate benefits to the environment. Such actions by the Administration, directly opposing the intent of Congress, have created a situation in which exploration for mineral deposits on the public lands by companies such as Royalstar and Sovereign, as well as much larger companies, is beyond the expectations of reasonable business risk. These actions on the part of the Administration are not only ill-advised, but probably unconstitutional and thus illegal.

***EXAMPLES OF REGULATORY ABUSE*:** Let me give you several examples of recent regulatory action which have led to either avoidable or unnecessary permitting delays and have greatly increased the cost of mineral development on public lands.

Cripple Creek Project, Colorado - In the early 1990's Independence Mining Company began the lengthy process to permit a major expansion of their gold mine at Cripple Creek, Colorado. The existing mine was an open pit, heap leach operation which Independence planned to increase considerably in size. After the company had completed permit requirements of all state and federal regulatory agencies, and had voluntarily cataloged and removed to storage several historic structures in the area to be mined, the *Bureau of Land Management* and the *Advisory Council on Historic Preservation* took renewed interest in historic aspects the project area. These two agencies and the *State Historical Preservation Office* raised questions under the guise of the *National Historical Preservation Act*. These late entrants to the permitting process caused an avoidable delay of over a year and an additional expense of over $5 million before the project obtained final construction authority. This case is an excellent example of the need for all regulatory agencies to review a project early in the permitting process and to make a timely decision if there are

specific concerns of the agency to be addressed. In addition to the agencies involved in the Cripple Creek case, the *U.S. Fish and Wildlife Service* and the *Environmental Protection Agency* are prime examples of agencies that all too often enter a permitting process in its final stages with questions or concerns. Such agency actions, for whatever reasons, are patently unfair to the other "stakeholders" in any permitting process.

Carlota Copper Project, Arizona - In the case of the Carlota Project in central Arizona, the process outlined by the National Environmental Policy Act (NEPA), an act implemented by Congress in 1970 to provide the regulatory framework to assure all environmental issues of a project are adequately covered, is currently under serious attack in the courts following a lengthy but successful permitting process.

Cambior USA purchased the proposed open pit, heap leach, solvent extraction-electrowining copper project in mid-1991 and began the permitting process by filing a Plan of Operations with the U.S. Forest Service in February 1992. Three years later, a Draft Environmental Impact Statement (DEIS) was issued but promptly challenged by the *Environmental Protection Agency* and various *special interest groups* such as *American Rivers*, the *Sierra Club*, the *Maricopa Audubon Society* and the *Mineral Policy Center* among others. In addition, the *U.S. Fish and Wildlife Service* made an adverse non-jeopardy decision on endangered species and a restraining order was issued by the courts related to archeology recovery in the area. This order was subsequently lifted by the Federal District Court and sustained by the Court of Appeals.

Finally, on July 22, 1997, the USFS issued the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) on the project. In mid-September 1997, challenges were filed in District Court by several groups opposed to the project. Two years later, in August 1999, a hearing on the matter was held. A strongly worded ruling was issued in favor of the USFS and Cambior in mid-September, 1999. The opponents of the project have until mid-November to appeal the decision to the Circuit Court of Appeals. Meanwhile, the EPA is still raising objections to Cambior's NPDES permit conditions.

To date, after the expenditure of over $64 million on the project and a permitting process over eight years in length, Cambior still does not have the regulatory approval needed to proceed with the project. Each step of the process has been contested by *special interest groups* who, with very little financial exposure, have managed to delay the project for several years. As a result of these delays, the regulators and the courts have been required to devote countless additional hours to the contested issues - issues that previously had been adequately addressed in various stages of the NEPA process.

Lisbon Valley Project, Utah - The Lisbon Valley Project is a proposed open pit, SXEW copper project in the Lisbon Valley of southeastern Utah. It is located in an area which has been described by federal regulatory authorities as ". . . if we are going to have mining on public lands, Lisbon Valley is as good as it gets. . . ." After several years of county, state and federal permitting action beginning in 1993, the owner of the project, Summo Minerals Corporation of Denver, was able to obtain all required permits in early 1997 - a relative short period considering the other examples I have discussed. Included in the permitting process was the preparation and issuance of a DEIS, a FEIS and the related ROD, all without any significant public opposition to the project.

Despite the apparently uninspiring location of the project, the lack of obvious environmental issues (water, endangered species, visual qualiity) and the strong public support for development of the mine, the *Mineral Policy Center (MPC)*, the *National Wildlife Federation (NWF)* and two local citizens filed an "Appeal and Petition for Stay" with the *Interior Board of Land Appeals (IBLA)* in June 1997. "This is a peculiar mix of parties given that there are no wildlife issues associated with development of the mine to attract the *NWF's*

ire, and that the vast majority of citizens in the affected two county area (roughly 5,000 people) support the mine" remarked Gregory Hahn, President of Summo,in remarks to a *Colorado Mining Association* gathering last year. "Clearly, the driving force behind the appeal is the *Mineral Policy Center*, an avowed adversary of the mining industry and mining on public lands in general," Hahn continued.

Issues raised by the Appeal were numerous, but two issues caught the attention of the IBLA. These issues were a result of: 1) the BLM bonding regulations issued in February, 1997, which became effective one week after the ROD was issued (a regulation subsequently successfully challenged in court by *NWMA*); and 2) proposed BLM 3809 regulations, which are currently "on hold" by an Act of Congress. In September 1998, 15 months after the "stay" was issued, the IBLA ruled in favor of the company, thus technically allowing the project to proceed. This appeal, however, delayed the project for over one year; cost Summo a significant amount of money that could otherwise have been invested in project development; and most importantly, prohibited the company from financing the project in a timely manner at a time the financial market was amenable to such financing. The NEPA process was said to have "failed" in this situation because the results of a properly prepared FEIS did not satisfy a group of "stakeholders" who were categorically opposed to mining on public lands. Those stakeholders were able to circumvent the NEPA process by pursuing litigation on frivolous issues.

Crown Jewel Project, Washington - The Crown Jewel Project is a proposed open pit conventional cyanide milling project in northeast Washington. I have particular knowledge of Crown Jewel since I was President of Crown Resources Corporation in 1988 when exploration leading to the discovery was begun. The mine permitting process began in January 1992, when the current project operator, Battle Mountain Gold, filed a Plan of Operations with the U.S. Forest Service. This set into motion what Christopher E. Herald, current President of Crown Resources Corporation and a partner on the project, describes as a "*Perpetual Motion Permitting and Litigation Machine*." Mr. Herald's recent testimony before the *National Academy of Sciences Committee on Hardrock Mining of Federal Lands* describes in detail the process at Crown Jewel and the delays and problems encountered with the system. His testimony is attached as Exhibit I to my testimony.

In summarizing the Crown Jewel permitting experience, after a 3 ½ year period the DEIS was issued in June 1995. This concluded a drawn-out process that studied all sorts of conceivable, and some inconceivable, aspects of the project. Included in issues reviewed was a study of the "effect on birds eating earthworms that might have ingested cyanide from project tailings." The FEIS and the ROD on Crown Jewel were issued in February 1997. To date over 54 permits have been received and all court challenges have been decided in favor of the company on Motions for Summary Judgment.

Unfortunately the Crown Jewel permitting process demonstrates a situation where federal officials and/or employees, concerned their decisions might be challenged in court, have been overcautious in their work. Because of this, several Forest Service employees delayed "decision after decision" and required "study after study," such as the one illustrated above, which have no realistic relevance to the environmental soundness of the project. Again, the time of such delays has a definite monetary value.

In March of this year, following a lengthy and litigation prone process, the Secretary of the Interior revoked the FEIS and ROD for Crown Jewel, referencing a November 1997 Solicitor's Opinion as justification for his action. That action, while specifically reversed by Congressional action this summer, demonstrates a prediction for *changing the rules in the middle of the stream* in the regulatory process. If the Department of Interior truly felt there was a problem with the title to the project, it should have raised the issue far earlier than it did in this case. Once permitting on a project begins, the rules should not be changed for that particular project unless major, initially unforeseen circumstances justify such a change.

SUMMARY OF CASE STUDIES - These case studies have several things in common. First, permitting of mining projects on public lands in the United States today is a comprehensive, time consuming and expensive endeavour wrought with bureaucratic delays and challenges by those opposed to the project - or opposed to mining in general. Second, officials in regulatory agencies are not held accountable for the time it takes them to work through the decision making process. And third,. an opponent or objector to a project in the regulatory process can easily challenge the project in court at little financial exposure to the group raising the challenge. All too often the opponent has the support of attorneys who earn their living solely by representing objectors to a particular class of project and who are funded by large, *special interest groups* with anti-industry agendas. Unfortunately, Mr. Herald's characterization of the current permitting process in the United States - the "*Perpetual Motion Permitting and Litigation Machine*" - is an all too accurate description.

SUGGESTED CHANGES IN REGULATORY SYSTEM: Congress needs to look at our present legal framework, especially the NEPA process, and make modifications where necessary to provide some balance to this process. The following suggestions, made by Mr. Herald to the *National Academy of Sciences*, provide an excellent place to begin the process of reform if Congress is serious about regulatory reform.

- *Develop Certainty of Permitting Time Frame* - Proponents of a project should be afforded a realistic permitting time-frame on any project. The regulatory agencies, the proponent, and the "stakeholders" should establish, up front, such a realistic timetable and maintain that timetable unless serious factors arise in the process mandating a change.

- *Accountability of Regulators* - A fair but effective method must be instituted to hold government employees and/or agencies accountable for their actions, or more appropriately, lack of actions. Permitting delays, based upon lack of action, or "passing the buck" to some other agency must be eliminated.

- *Mediation/Consultation Process with Agencies* - Disagreements will always occur between parties in any regulatory process. When those disagreements become serious, or deadlock the process, there should be a mandated method to resolve such situations. A mediation or consultation process that could be instituted by any party - whether it be agency, proponent, or stakeholder - should be established to resolve these difficulties.

- *Make the Hardrock Industry a Full Partner to the Process* - All too often the regulatory agency accepts the filing of a Plan of Operation, then conducts the review process allowing only minimal additional input of the affected party - the proponent. The proponent should be an integral party to the entire review process, just as the *special interest groups* are now allowed to be an active party to the process.

- *Provide Compensation to the Prevailing Party in Litigation* - Litigation must have a real cost to all parties involved. One method to provide this would be to require the losing party to pay the costs incurred by the winning party and by the court in such litigation. Another method would be to require a legitimate bond covering the cost of delay to be posted when litigation is filed. This bond would be forfeited if the plaintiff's case is not upheld. These methods would at least eliminate "frivolous," *no-can-win* litigation from being used just to delay or stop a project.

If these steps were taken in revising the NEPA process, the overall system would be much improved and

permitting time and expense would be significantly reduced. I would urge you to consider these suggested revisions when you review the need to reform of the environmental aspects of the regulatory system governing the mining industry.

NATIONAL ACADEMY OF SCIENCES STUDY: I would now like to briefly comment on the results of the recently issued *National Academy of Sciences* report on "Hardrock Mining on Federal Lands" commissioned by Congress in July, 1998.

On September 29th the *National Academy of Sciences (NAS)* issued in draft form its 249 page consensus study entitled "Hardrock Mining on Federal Lands." This study consisted of a comprehensive review of laws and regulations governing the environmental aspects of exploration and mining on public lands in the United States. On the same date, the *Mineral Policy Center*, a Washington, D. C. based opponent of mining, released a several page statement on their internet site (<www.mineralpolicy.org/publications/6mines_final>) titled "Six Mines Six Mishaps." This report is supposedly intended to expose the massive holes in environmental regulations of mining on public lands.

A carefully review of the attached comparison of the *National Academy of Sciences* findings with those of "Six Mines Six Mishaps" is enlightening. This comparison was prepared by an environmental consultant, Debbra Struhsacker, of Reno, Nevada. Struhsackser's four-page comparison is attached as Exhibit II to my testimony.

In summary Struhsacker's comparison covers several key components although not all will be discussed here:

- Who are the Authors - *NAS* authors were 13 identified individuals with a broad range of expertise in the area of study. Other than the President of *MPC* the authors of the *MPC* document were not identified, but the seven contributors listed are affiliated with *special interest groups* opposing mining.

- Who are the Reviewers - *NAS* selected 10 individuals with diverse perspectives and technical expertise to review the Committee's study. *MPC* listed no reviewers.

- What were the Objectives - Congress asked the *NAS* to conduct a study with specific objectives: 1) identify federal and state statutes and regulations applicable to environmental protection of federal lands in connection with mining activity; 2) consider the adequacy of existing statutes and regulations; and 3) make recommendations for the coordination of federal and state regulations to ensure environmental protection, increase efficiency, avoid duplication and delay, and identify the most cost-effective manner for implementation. The *MPC* document does not outline any specific objectives.

- What Investigative Methods Were Used - The Committee conducted an evidence-based analysis that concentrated on specific elements of hardrock mining on federal lands. The *MPC* provided no information on this subject.

- What References Were Used - The *NAS* study listed 108 technical publications, agency documents, and scientific texts in addition to numerous speakers at a series of hearings held by the Committee. The *MPC* document listed several newspaper articles, letters written by and conversations with *special interest groups* and anti-mining activists, several agency reports, and two phone conversations with the Montana Water Quality Bureau.

- Is the Information In These Documents Complete and Accurate - Appendix C to the *NAS* study provides a detailed list of permits required for eight recently permitted and proposed mines. The *MPC* document does not accurately characterize the extensive regulatory requirements for modern mines. I quote from their document ". . . the Secretary (of the Interior) must adhere to the weak hardrock mining regulations contained in Section 3809 of the Code of Federal Regulations . . . published in 1981 when James Watt headed the Department of Interior, these regulations are outdated and ineffective." Contrary to the *MPC* statement, the 3809 Regulations were promulgated in 1980 and took effect in early January 1981 while Cecil Andrus was still Secretary of the Interior.

The above comparisons are but a third of the items covered in the Struhsacker comparison. I invite you to compare each issue covered by Ms. Struhsacker in Exhibit II, compare her comments with the text of the *NAS* report, and compare those findings with the items alleged in the *Mineral Policy Center's* "Six Mines Six Mishaps." Judge for yourself the nature of, and the need for, further regulation of the mining industry versus providing adequate enforcement of existing regulations by adequately staffed regulatory agencies.

CONCLUSIONS: The mine permitting process in the United States has become corrupted by abuse of the process by *special interest groups* that oppose mineral development. It has also been complicated by the actions, or lack of action, by agency officials concerned that their decisions might be overturned by the courts. The time required to complete this permitting process has far outstripped time reasonably needed to protect the environment from potentially adverse affects of mining.

Permitting time has a definite monetary cost in a globally competitive industry. American consumers of mining products ultimately pay this cost. For the U.S. domestic mining industry to survive, action needs to be taken by Congress to resolve the defined abuses of the existing permitting system.

Congress should carefully consider the findings of the *National Academy of Sciences* study and take appropriate action to correct both the few deficiencies and the many abuses of the current system of environmental regulation of mining on public lands.

Thank you for the opportunity to make this presentation to your Committee.

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(Testimony Attachment)

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